IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3177 OF 2004

Selina P. Shah
R/o.Flat No.4, Anand, 268,
8th Road, Khar(W),
Mumbai : 400 052. ...Petitioner

V/s.

1.The Principal, Mithibai College of Arts,
Chauhan Institute of Science & Amrutben
Jivanlal College of Commerce & Economics
Vile Parle(W), Mumbai:400 056.

2. The Hon. Secretary,
Shri Vile Parle Kelavani Mandal,
C/o.Mithibai College of Arts,
Chauhan Institute of Science &
Amrutben Jivanlal College of
Commerce & Economics,
Vile Parle(W), Mumbai:400 056.

3. The University of Mumbai,
Fort, Mumbai.

4. The Jt. Director of Higher
Education, Mumbai Region,
3, Mahapalika Marg, Elphinstone
Technical High School,
Bombay 400 001.

5. State of Maharashtra,
Department of Higher & Technical

Education, Mantralya Annexe,
Mumbai:400 032. ....Respondents

Ms.Ushajee Peri with Mr.Mihir Desai for Petitioner.
Mr.Rahul Nerlekar for Respondent No.1 & 2.
Ms.S.M. Dandekar AGP for Respondent No.4 & 5.

CORAM : V.M. KANADE, J.
DATED : 21st MARCH, 2007.

ORAL JUDGMENT:-

1. Heard learned counsel appearing on behalf of the Petitioner and learned counsel appearing on behalf of the Respondents.

2. The Petitioner is challenging Judgment and Order passed by the College Tribunal, Mumbai whereby Presiding Officer of College Tribunal was pleased to reject appeal which was filed by the Petitioner against termination of her services.

3. Brief facts which are relevant for deciding this petition are as under:-

The Petitioner has completed B.S.C. in first class and also done her M.S.C. Research in Microbiology. Initially, the Petitioner was working in M.V. & L.U. College, Andheri, Mumbai as full time Lecturer

from 15th November, 1988 to 22nd July, 1999. The Petitioner joined the Respondent college as full time Lecturer. Thereafter, on 23rd July, 1999, the Petitioner was appointed through local selection committee. In the appointment letter it was stated that she was appointed on ad-hoc basis. Letter of appointment specifically states as under:-

> "Subject to condition that this appointment is made on Ad-hoc basis until surplus Staff/NOC received from the Director of Education, Pune, for the academic year 1999-2000".

4. The Government of Maharashtra had issued two circulars one dated 01/04/1999 being circular No.JTDHE/MR/STENO/ADDL. TEACHER/1999/2673-2823 and another circular dated 07/05/1999 being circular No.JTDHE/MR/STENO/ADDL.TEACHER/1999. In both these circulars, Government of Maharashtra had imposed condition that before any appointment was made by the Management, no objection certificate from the Government had to be obtained for filling up vacant post during the year 1999-2000.

5. It is pertinent to note here that several minority institutions

including respondent No.1 and 2 College had challenged aforesaid circulars by filing writ petition No.2545 of 1999. In the said writ petition validity of these circulars vis-a-vis minority institutions was challenged. Notice of Motion No.32 of 2000 was taken out in this writ petition and following order was passed by Division Bench of this Court.(Coram : B.P. Singh, C.J. & N.J. Pandya, J).

> "1. Heard learned counsel for the parties.
>
> 2. Notice of Motion is made absolute in terms of prayer clause (a) (i) and (ii) which reads thus.
>
> (a) That pending the hearing and final disposal of the Writ petition, this Hon'ble Court be released.
>
> (i) to stay the Circulars dated 1st April 1999 and 7th May 1999 insofar as the Minority Educational Institutions and the members of the Petitioner association as listed in Exhibit-A to the Petition are concerned.
>
> (ii) to restrain the Respondents from in any manner applying the Circulars dated 1st April 1999 and 7th May 1999 to the members of the Petitioner Association and the educational institutions run by them as listed in Exhibit-A to the Petition and/or from taking any steps whatsoever against those educational institutions of any nature whatsoever by virtue of said circulars."

Name of the Respondent No.1 and 2 college figures at serial No.15 on page No.77(c) to the said petition.

6. In spite of specific stay which was granted by this Court, services of the Petitioner was not regularized though she was continuously working thereafter and her appointment was made year to year basis and the same condition which was imposed in the first letter of appointment was continued in the subsequent letters of appointment which were issued in favour of the Petitioner i.e. Dated 08/06/2000, 08/06/2001, 10/06/2002 and subsequent appointments are continued upto 2004.

7. Respondent/Management No.1 and 2 is admittedly a minority institution. However, the Respondent college is fully aided by the State Government and it is also affiliated to the University of Mumbai. Another important fact which needs to be noted here is that admittedly post which was occupied by the Petitioner was permanent post and it continues to be permanent post till today. It is contention of the Petitioner that she was appointed on permanent clear vacancy at the time of her initial employment in the year 1988 and that since she was working since 1988,

she was not required to have NET/SET qualification.

8. The Government paid salary of the Petitioner till January, 2001. Thereafter, Management continued to pay salary to the Petitioner till 2004 and since the salary was not reimbursed by the State, the Management did not re-appoint the Petitioner on the said post. The Petitioner, therefore, was constrained to file appeal before the College Tribunal. The College Tribunal inter-alia held that the Petitioner was appointed on ad-hoc temporary basis and after relying on various judgments of Supreme Court wherein Supreme Court had held that ad-hoc employee had no legal right to challenge the order of termination and therefore, on that ground dismissed appeal which was filed by the Petitioner. Another development which has also be noted and which has some relevance to the facts of present case is that during the pendency of writ petition, the petitioner also filed another writ petition being writ petition No.1541/05 seeking reimbursement of the salary from the Government from June 2001 to 26th October, 2004. This petition was partly allowed and the Government was directed to pay the Management full wages in respect of the Petitioner for the period from June 2001 to

26th October, 2004. It was made clear that this payment should be subject to final decisions of writ petition No.2545/1999 and writ petition No.3177/2004.

9. Learned counsel appearing on behalf of the Respondent No.1 and 2 has reiterated the stand which was taken by him before the College Tribunal. He has submitted that on account of insistence of the Government to obtain no objection certificate from them, the Management had no option but to dis-continue the Petitioner from the College. He reiterated the stand which was taken by the Respondent No.1 before the College Tribunal and submitted that Respondent No.1 has no objection if the Respondent No.4 is directed to regularize the appellant's appointment as a full time lecturer and release her salary with direction to Respondent No.3 University to approve her appointment with retrospective effect. The Management had, therefore, supported case of the Petitioner and had expressed its inability to continue her on the ground of financial burden. He submitted that the Government continued to insist on the no objection certificate though Division Bench of this Court had specifically exempted minority institutions from obtaining no objection certificate as required by the two circulars mentioned herein

above.

10. Ms.Dandekar learned AGP appearing on behalf of the Respondent No.4 and 5 submitted that in view of stay which is granted by the Division Bench of this Court, it was not necessary to obtain no objection certificate from the Government since Respondent No.1 and 2 were minority institutions. She invited my attention to the affidavit in reply which was filed by the Joint Director, Higher Education, Mumbai dated 6th February, 2007 and 22nd February, 2007. In these two affidavits, the Respondents have taken stand that the Petitioner was appointed as full time lecturer through local selection committee on purely temporary basis. She submitted that Statute 417 clearly contemplated that appointment should be made through regular selection committee as provided in the said Statute. Government in their affidavit in reply had reiterated its stand which is taken in their circulars dated 01/04/1999 and 07/05/1999 though it has stated that these circulars have been stayed by this Court. In para 8 of Affidavit in reply dated 6th February, 2007, it is stated by the Joint Director Shri.Madhukar Andhale, that approval was granted to the college only to fill up vacant post in Microbiology Department in the said college. It was stated in the affidavit in reply that

Respondent No.1 college appointed another person other than the Petitioner.

11. Learned counsel appearing on behalf of the Petitioner filed rejoined and invited my attention to Statute 417. She submitted that requirement of appointment of lecturer through regular selection committee is dispensed with so far as minority institutions are concerned and therefore, insistence on the part of the Government that the Petitioner was not appointed through the regular constituted Committee was patently illegal.

12. I have given my anxious consideration to the submissions made by the learned counsel for the Petitioner and Management and Respondent No.4 and 5. In my view, order of termination issued by the Respondent College and which is confirmed by the College Tribunal is liable to be set aside for the following reasons.

13. As I have already indicated in the chronology of facts which is stated herein above that the Petitioner was appointed by clear vacancy on permanent basis and she was issued letter of appointment in which it was stated that her appointment was subject to condition of obtaining no

objection certificate from the Government. Same condition was reiterated in the subsequent letter of appointment. In the first two years the Government paid her salary. However, after 2001 Government stopped paying her salary and the Management had to, therefore, pay salary from their own pocket. It is now on record that by virtue of subsequent order passed by the Division Bench of this Court dated 10th November, 2006 in writ petition No.1541/2005, this salary has been reimbursed.

14. It is an admitted position that circulars which were issued by the Government dated 01/04/1999 and 07/05/1999 are already stayed by the Division Bench of this Court as mentioned herein above. Order of Division Bench is already reproduced in para No.4. It was, therefore, not open for the Government to insist on the no objection certificate from the Management, particularly, when circulars which were issued by the Government were stayed by this Court. It is submitted by the learned counsel for the Petitioner that Respondent No.1 and 2 continued to ask for no objection certificate and therefore, no objection certificate was not granted. This submission can not be accepted as there was specific order by this court restraining the Government and the Management from

insisting on the no objection certificate during relevant period. If these facts are taken into consideration, it will have to be held that the appointment of the Petitioner was on clear vacancy and on permanent post and therefore, the Management could not have terminated her services or the State Government could not have refused to grant approval to the appointment of the Petitioner on the aforesaid ground in view of the operation of the stay to the circulars which were issued by the Government.

15. So far as second objection which is raised by the State for granting approval to the appointment of the Petitioner is concerned, that objection also can not be sustained. It is the case of the Government that the Petitioner was not appointed through regular selection committee and therefore there was no question of granting approval to her appointment. In order to appreciate the said submissions, it would be relevant to consider relevant provisions of Statute 417 which reads as under:-

"S.417 (i) Selection Committee:

There shall be a Selection Committee for making recommendations to the Governing Body for appointment of teachers in a College.

Every Selection Committee shall consist of the following persons:-

(a) The Chairman, Governing Body of the College or his nominee (who shall be the Chairman of the Selection Committee);

(b) One nominee of the Vice-Chancellor;

(c) One expert to be nominated by the University;

(d) One nominee of the Director of Education (Higher Education)/Director of Sports/Director of Social Welfare, Maharashtra State, as the case may be;

(e) The Principal of the College; and

(f) The Head of the Department of the college in the subject concerned and where there is no Head of the Department the senior-most teacher in the subject.

Provided, however, that colleges established and administered by minority managements covered by the provisions of Article 30(1) of the Constitution of India may form their own selection committees and the above provision will not apply in their case.

(ii) Procedure: ....."

16. Perusal of aforesaid provisions clearly indicates that in case of minority institutions, it is not necessary that lecturer should be appointed through regular selection committee and discretion is vested on the Minority Institutions to appoint lecturer on their own through local selection committee.

17. It is an admitted position that the Petitioner was appointed through local selection committee. In view of facts and circumstances of the case and clear position in law, therefore, objection raised by the State regarding manner in which the Petitioner was appointed by the Respondent No.1, can not be sustained.

18. The Tribunal, in my view, has clearly overlooked this position and has merely relied on the nomenclature of the words which are used in the letter of appointment. The Hon'ble Presiding Officer of the Tribunal has not taken into consideration the condition which was imposed in the letter of appointment and subsequent stay which was granted by the Division Bench of this Court. If the Presiding Officer had taken into consideration the aforesaid facts, it would not have recorded findings that

the Petitioner was appointed on ad-hoc basis. Reliance, therefore, which is placed by the Presiding Officer of the College Tribunal on various judgments of the Hon'ble Supreme Court, therefore, will not apply to the facts of the present case.

19. Under the circumstances, impugned order passed by the College Tribunal will have to be set aside. Writ Petition is allowed and order of termination is set aside and direction is given to the Respondent No.1 to reinstate the Petitioner pending hearing and final disposal of writ petition No.2545 of 1999 which is pending in this court. Petitioner is deemed to be permanent and shall not be discontinued on the ground that no objection has not been obtained by the Management as per circular dated 01/04/1999 and 07/05/1999. Writ Petition is therefore, allowed in the above terms. Respondents are directed to continue the services of the Petitioner as full time lecturer and pay her regular wages. Petition is allowed in the above terms.

V.M. KANADE, J.